

RESOLUTION NO. 4 5 2 2

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF AUBURN, WASHINGTON, AUTHORIZING
THE MAYOR AND CITY CLERK TO EXECUTE A
REAL ESTATE PURCHASE AND SALE
AGREEMENT BETWEEN THE CITY OF AUBURN
AND ANDREW WOLFE

WHEREAS, the City of Auburn is the owner of a certain piece of real property located in the City of Auburn, identified as King County Tax Parcel Number 322205914; and

WHEREAS, the City no longer needs the property for municipal purposes and the property is being surplusd under Resolution No. 4521; and

WHEREAS, Andrew Wolfe desires to purchase this property from the City and the City is willing to sell this property to Andrew Wolfe at a price that is acceptable to the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, KING COUNTY, WASHINGTON, HEREBY RESOLVES as follows:

Section 1. The Mayor of the City of Auburn and the Auburn City Clerk are hereby authorized to execute a Real Estate Purchase and Sale Agreement between the City of Auburn and Andrew Wolfe which agreement shall be in substantial conformity with the Agreement attached hereto, marked as Exhibit "A" and incorporated herein by this reference.

Section 2. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 3. This resolution shall be in full force and effect upon passage and signatures hereon.

Dated and Signed this 8th day of September, 2009.

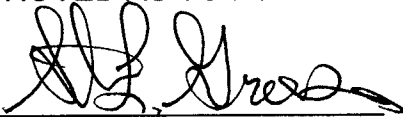
CITY OF AUBURN

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney

**REAL ESTATE PURCHASE AND SALE AGREEMENT
CITY OF AUBURN AND ANDREW WOLFE**

THIS AGREEMENT is made and entered into by and between the sellers, CITY OF AUBURN (the "City"), and Andrew Wolfe ("the Buyer").

WITNESSETH:

Whereas, the City owns a certain piece of real property that it no longer needs for its municipal functions and is being surplusd, and the Buyer is desirous of purchasing; and

Whereas, the City is willing to sell the property to the Buyer for said King County Assessor's appraised value.

NOW, THEREFORE, in consideration of the following terms, conditions and covenants and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, IT IS AGREED by the parties as follows:

1. **SALE OF PROPERTY.** The City shall sell, convey and transfer to the Buyer and the Buyer shall purchase, acquire and take from the City, the real property legally described as follows, and generally known as

Legal Description: TR A KC SP 381011 REC #
8205030634 SD SP DAF - E 1/2 OF N 2/3 OF E 1/2
OF W 2/3 OF S 3/4 OF NW 1/4 OF SE 1/4 LESS CO
RD LESS POR THOF LY N OF CO RD - AKA LOT 1
KCSP 674015 REC # 7512240440

King County Tax Parcel Number 3222059174

2. **EARNEST MONEY DEPOSIT.** The Buyer agrees to pay herewith One Hundred US Dollars (\$100.00) as earnest money, in the form of a check to be deposited with the closing agent as part payment on the purchase price, payable to the City upon closing, subject to the conditions set forth herein.

3. **PURCHASE PRICE.** The purchase price for the Property is One Thousand US Dollars (\$1,000.00). The parties acknowledge that the purchase price represents the fair market value of the Property. The agreed upon amount is payable by cashiers check at closing.

4. **CLOSING**. The closing date and place shall be mutually agreed upon by the parties. Both parties shall be responsible and entitled to have all closing documents reviewed by their own counsel or agent prior to closing.

5. **CLOSING DOCUMENTS**. At the closing, the City shall produce and execute a Warranty Deed (The "Deed"), duly executed and acknowledged in a recordable form, conveying to the Buyer, marketable title to the Property free and clear of all liens, assessments, deeds of trust, mortgages, or encumbrances except those expressly agreed to by the City, and all other documentation reasonably appropriate for the sale.

6. **EXPENSES**.

A. Expenses of the City. The City shall pay:

- (i) real estate taxes prorated to the date of closing, if any;
- (ii) all assessments, liens, mortgages, deeds of trust or other encumbrances (i.e. real estate excise tax), if any;
- (iii) the City's attorney fees; and
- (iv) all other expenses incurred by the City which relate to the Property;
- (v) title insurance premiums.

B. Expenses of the Buyer. The Buyer shall pay:

- (i) all recording fees;
- (ii) their attorney fees;
- (iii) real estate taxes due after the closing date, if any.

7. **POSSESSION**. The City shall deliver possession of the Property to the Buyer on the date of closing.

8. **TIME**. Time is of the essence of this Agreement.

9. **TITLE EXAMINATION**. This Agreement is subject to and conditioned on the City providing to the Buyer clear title to the real property, as shown on a Policy of Title Insurance covering the purchase of the Property in the amount of the cash purchase price, provided and paid for by the City. In the event that the City is unable to cure any title encumbrances which are unacceptable to the Buyer, the Buyer may at Buyer's option: (1) terminate this agreement by written notice, whereupon no party shall have any further liability under this agreement; or (2) postpone the date of closing for up to sixty (60) days, during which time the City shall use all reasonable efforts and expend reasonable sums as may be necessary to cure the objections of the Buyer. If the objections to title are not cured on or before the closing date, as postponed, the Buyer may terminate this agreement or waive the objections to title.

10. **HAZARDOUS WASTE**. To the best of the City's knowledge the property is not in violation of any federal, state or local law, ordinance, or

regulation relating to the environmental conditions on, under, or about the property, including but not limited to, soil and surface and ground water conditions, and that during the time in which the City owned the property, neither the City nor, to the best of the City's knowledge, any third party has used, generated, stored, or disposed of, on, under, or about the property or transported to or from the property any hazardous waste, toxic substances, or related materials (the "Hazardous Materials"). For the purposes of this paragraph, Hazardous Materials shall include, but is not limited to, substances defined as "Hazardous Substances," "Hazardous Materials," "Hazardous Waste," "Toxic Substances," in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and RCW Title 7 and the regulations promulgated pursuant to such laws.

The City will indemnify and hold harmless the Buyer from all required remediation, damage, claim or loss (including attorney fees incurred in defending any claim) arising from the placement, storage, disposal or release of any Hazardous Materials during such time as the City was in possession or had any interest in the property. This indemnification and hold harmless shall survive and not be merged into the deed delivered by the City to the Buyer for the property.

If prior to the closing date the Buyer discovers that the property contains any Hazardous Waste, of which it has not been previously advised, the Buyer may terminate this Agreement, and the Earnest Money shall be returned to the Buyer.

12. **NOTICES.** Any notices required or permitted to be given shall be in writing and delivered either in person or by certified mail, return receipt requested, postage pre-paid, addressed as follows or such other address as may be designated by either party:

City

City of Auburn
Human Resources Department
25 W. Main St.
Auburn WA 98001

Buyer

Andrew Wolfe
28130 110th Ave SE
Auburn, WA 98030
(425) 707-5812

Any notice given pursuant to this Agreement shall be deemed effective the day it is personally delivered or three (3) business days after the date it is deposited in the United States mails.

13. **ENTIRE AGREEMENT/MODIFICATION.** This written Agreement constitutes the entire and complete Agreement between the parties hereto and supersedes any prior oral or written agreements between the Parties with respect to the Property. It is expressly agreed that there are no verbal understandings or agreements, which in any way change the terms, covenants, and conditions herein set forth. No modifications of this Agreement and waiver of any of its terms and conditions shall be effective unless in writing and duly executed by the parties hereto.

14. **BINDING EFFECT.** All covenants, agreements, warranties and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns.

15. **CITY COUNCIL APPROVALS.** The Buyer acknowledges that this Agreement does not bind the City until (1) the Mayor of the City of Auburn executes the Agreement and (2) the Auburn City Council approves the Agreement.

16. **DISCLOSURE STATEMENT.** The City shall, within five (5) days of the Buyer's accepting this Agreement, deliver to the Buyer a completed, signed and dated Real Property Transfer Disclosure Statement substantially in the form set forth in RCW 64.06.020, if applicable. The Buyer shall within three business days, or as otherwise agreed to, after receipt of the Real Property Transfer Disclosure Statement have the right to (1) approve and accept the Real Property Disclosure Statement; or (2) rescind this Agreement. If the Buyer elects to rescind the Agreement, the Buyer will deliver written notice of rescission to the City within the above three (3) business day period, or as otherwise agreed. Upon delivery of a rescission statement, the Buyer shall be entitled to immediate return of all deposits and other consideration paid to the City. If the Buyer does not deliver a written rescission notice, the Real Property Transfer Disclosure Statement will be deemed approved.

17. **DEFAULT AND ATTORNEY'S FEES.** In the event that any party fails, without legal excuse, to perform any obligation under this Agreement, then the other parties may, at their option, bring suit against the party failing to perform for the other parties' actual damages, or pursue any other rights or remedies available at law or in equity.

If one or more parties institute suit concerning this Agreement, the prevailing party or parties shall be entitled to court costs and reasonable attorney's fees. In the event of trial, the court shall fix the amount of the

attorney's fees. Venue of any suit shall be in Pierce County, and this Agreement is to be governed by the laws of the State of Washington.

18. **LEGAL RIGHTS.** EACH OF THE PARTIES SHALL SUBMIT THIS AGREEMENT TO THEIR ATTORNEYS AND TAX SPECIALISTS FOR THEIR REVIEW AND APPROVAL PRIOR TO SIGNING THIS AGREEMENT. NO REPRESENTATIONS OR WARRANTIES ARE MADE BY ONE PARTY TO THE OTHER PARTY AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT OR TAX CONSEQUENCES OF THIS AGREEMENT, THE TRANSACTION DESCRIBED HEREIN, OR ANY ATTACHMENTS TO THIS AGREEMENT.

19. **TIME LIMIT FOR ACCEPTANCE.** The City offers to sell the property on the above terms and conditions. The Buyer has until midnight of Tuesday, September 8, 2009 to accept this offer (if not filled in, the day following the City's signature date below.) Acceptance is not effective until a signed copy hereof along with any earnest money is actually received by the office of Closing Agent. If this offer is not so accepted, it shall lapse.

20. **ASSIGNMENT.** No party to this Agreement shall assign any right or obligation hereunder in whole or in part, without the prior written consent of the other parties hereto.

21. **AMENDMENT, MODIFICATION OR WAIVER.** No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound, or such party's or parties' duly authorized representative(s) and specifying with particularity the nature and extent of such amendment, modification or waiver. Any waiver by any party of any default of another party shall not effect or impair any right arising from any subsequent default.

Nothing herein shall limit the remedies or rights of the parties hereto under and pursuant to this Agreement.

22. **INDEMNIFICATION.** Each party hereto ("Indemnifying Party") shall indemnify, defend and hold harmless the other parties hereto and their officers, agents and employees, or any of them ("Indemnified Party or Parties") from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, including attorney fees, by any reason of or arising out of the act or omission of the Indemnifying Party, its officers, agents, employees, or any of them relating to or arising out of the performance of this Agreement except to the extent a court of competent jurisdiction finds that the claim, action, suit, liability, loss, cost, expense, or damage is caused by the Indemnified Party or Parties. If a final judgment is rendered against an Indemnified Party or Parties, or jointly against an Indemnified Party or Parties and the Indemnifying Party, the Indemnifying Party shall satisfy the same to the extent that such judgment was due to the Indemnifying Party's negligent acts or omissions.

23. **CAPTIONS, HEADINGS AND TITLES.** All captions, headings or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and shall not constitute a part of this Agreement or act as a limitation of the scope of the particular paragraph or sections to which they apply. As used herein, where appropriate, the singular shall include the plural and vice versa and masculine, feminine and neuter expressions shall be interchangeable. Interpretation or construction of this Agreement shall not be affected by any determination as to who is the drafter of this Agreement, this Agreement having been drafted by mutual agreement of the parties.

24. **SEVERABLE PROVISIONS.** Each provision of this Agreement is intended to be severable. If any provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

25. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding of the parties hereto in respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to such subject matter.

26. **COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be one and the same Agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

27. **SIGNATURES:**

CITY OF AUBURN

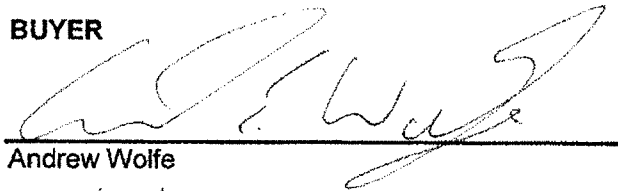
Peter B. Lewis, Mayor

SEP 8 2009

Date

ACCEPTED this 3 day of September, 2009

BUYER



Andrew Wolfe

9/3/2009

Date